

**STATE OF MICHIGAN**  
**IN THE SUPREME COURT**

**PEOPLE OF THE STATE OF MICHIGAN**

Plaintiff-Appellee

-VS-

**ARTHUR JEMISON**

Defendant-Appellant

Supreme Court No. 157812

Court of Appeals No. 334024

Lower Court No. 15-10216-01

**WAYNE COUNTY PROSECUTOR**  
Attorney for Plaintiff-Appellee

**STATE APPELLATE DEFENDER OFFICE**  
Attorney for Defendant-Appellant

**SUPPLEMENTAL AUTHORITY PURSUANT TO MCR 7.312(1) and MCR 7.212(F)**

**STATE APPELLATE DEFENDER OFFICE**

**BY: KRISTIN LAVOY (P71145)**  
**Assistant Defender**  
3300 Penobscot Building  
645 Griswold  
Detroit, Michigan 48226  
(313) 256-9833

On November 2, 2018 the Ninth Circuit in *United States v Carter*, \_\_ F Appx \_\_ (Docket No 16-50271, CA 9, 2018) vacated several of a defendant's convictions when the state admitted testimony via two-way video over the defendant's objection relying on *Maryland v Craig*, 497 US 836, 850 . *Carter*, \_\_F Appx at \_\_; slip op at 3.

In *Carter*, the prosecution sought to admit testimony of the complaining witness by video or to take her deposition pursuant to Federal Rule of Criminal Procedure 15 because she was living in another state and instructed not to travel due her pregnancy. *Id.* at 4. Mr. Carter objected to both options on Confrontation Clause grounds. *Id.* at 5. The short notice made the deposition option infeasible and accordingly, the court granted the prosecution's application to use the video option. *Id.* at 5.

The panel in *Carter* held that "criminal defendants have a right to 'physical, face-to-face confrontation at trial' and that right cannot be compromised by the use of a remote video procedure unless it is 'necessary' to do so and the 'reliability of the testimony is otherwise assured.'" *Id.* at 3 citing *Maryland v Craig*, 497 US 836, 850 (1990). The use of remote video must be "reserved for rare cases in which it is 'necessary.'" *Carter*, \_\_F Appx at \_\_; slip op at 12 citing *Craig*, 497 US at 850. A short continuance or added expense was not a sufficient necessity to warrant the use of the video. *Id.* at 16.

This case is persuasive and on point with Mr. Jemison's case. Mr. Jemison also objected to the use of two-way video at his trial and argued in his brief in the Court of Appeals and in his application to this Court, that the use of the video violated his Confrontation Clause rights, citing to *Maryland v Craig*. The expense of bringing the expert into trial for actual face-to-face confrontation was not a sufficient enough reason to justify the use of the video. This Honorable Court should reverse Mr. Jemison's convictions.

Date: November 9, 2018

**STATE APPELLATE DEFENDER OFFICE**

BY: /s/ Kristin LaVoy  
**KRISTIN LAVOY (P71145)**